

## CCRB INVESTIGATIVE RECOMMENDATION

|   |                                     |                           |  |                                    |                                 |
|---|-------------------------------------|---------------------------|--|------------------------------------|---------------------------------|
| Investigator:<br>Ethan De Angelo                  | Team:<br>Team # 5                   | CCRB Case #:<br>201308155 | <input checked="" type="checkbox"/> Force              | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|   |                                     |                           | <input checked="" type="checkbox"/> Abuse              | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Tuesday, 09/03/2013 2:00 PM   | Location of Incident:<br>§ 87(2)(b) | Precinct:<br>40           | 18 Mo. SOL<br>3/3/2015                                 | EO SOL<br>3/3/2015                 |                                 |
| Date/Time CV Reported<br>Wed, 09/04/2013 11:42 AM | CV Reported At:<br>CCRB             | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Wed, 09/04/2013 11:42 AM |                                    |                                 |

| Complainant/Victim | Type       | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b)         | § 87(2)(b) | § 87(2)(b)   |

| Witness(es) | Home Address |
|-------------|--------------|
| § 87(2)(b)  | § 87(2)(b)   |
| § 87(2)(b)  | § 87(2)(b)   |
| § 87(2)(b)  | § 87(2)(b)   |

| Subject Officer(s)    | Shield | TaxID  | Command |
|-----------------------|--------|--------|---------|
| 1. POM Jonathan Katz  | 15401  | 941988 | PSA 7   |
| 2. SGT Kurtis Rose    | 03223  | 946196 | PSA 7   |
| 3. POM Jaime Martinez | 31017  | 945846 | PSA 7   |
| 4. POM Jose Acevedo   | 31945  | 932234 | PSA 7   |
| 5. Officers           |        |        | PSA 7   |
| 6. An officer         |        |        | PSA 7   |

| Officer(s)           | Allegation   | Investigator Recommendation |
|----------------------|--|-----------------------------|
| A.SGT Kurtis Rose    | Abuse: Sgt. Kurtis Rose entered and searched § 87(2)(b) in the Bronx.                  | § 87(2)(b)                  |
| B.POM Jose Acevedo   | Abuse: PO Jose Acevedo entered and searched § 87(2)(b) in the Bronx.                   | § 87(2)(b)                  |
| C.POM Jaime Martinez | Abuse: PO Jaime Martinez entered and searched § 87(2)(b) in the Bronx.                 | § 87(2)(b)                  |
| D.POM Jonathan Katz  | Abuse: PO Jonathan Katz entered and searched § 87(2)(b) in the Bronx.                  | § 87(2)(b)                  |
| E. Officers          | Abuse: Officers entered and searched § 87(2)(b) in the Bronx.                          | § 87(2)(b)                  |
| F.SGT Kurtis Rose    | Force: Sgt. Kurtis Rose used a taser against § 87(2)(b)                                | § 87(2)(b)                  |
| G. An officer        | Force: An officer used physical force against § 87(2)(b)                               | § 87(2)(b)                  |
| H.SGT Kurtis Rose    | Abuse: Sgt. Kurtis Rose refused to provide his name and/or shield number to § 87(2)(b) | § 87(2)(b)                  |

## Case Summary

On September 4, 2013, § 87(2)(b) contacted the CCRB by telephone and filed a complaint (Encl. 6A-B).

At approximately 2:00 p.m., § 87(2)(b) was sitting on the kitchen floor of his apartment located at § 87(2)(b) in the Bronx, when officers from PSA 7 entered his apartment. The following allegations resulted.

**Allegation A- Abuse of Authority- Sgt. Kurtis Rose entered and searched § 87(2)(b) in the Bronx.**

**Allegation B - Abuse of Authority- PO Jose Acevedo entered and searched § 87(2)(b) in the Bronx.**

**Allegation C - Abuse of Authority- PO Jaime Martinez entered and searched § 87(2)(b) in the Bronx.**

**Allegation D - Abuse of Authority- PO Jonathan Katz entered and searched § 87(2)(b) in the Bronx.**

**Allegation E – Abuse of Authority- Officers entered and searched § 87(2)(b) in the Bronx.**

§ 87(2)(g)

**Allegation F- Force – Sgt. Kurtis Rose used a taser against § 87(2)(b)**

§ 87(2)(g)

**Allegation G- Force- An officer used force against § 87(2)(b)**

§ 87(2)(g)

**Allegation H- Abuse of Authority- Sgt. Kurtis Rose refused to provide his name and/or shield number to § 87(2)(b)**

§ 87(2)(g)

## Results of Investigation

### Civilian Statement(s)

**Complainant/Victim:** § 87(2)(b)

§ 87(2)(b) § 87(2)(b) old at the time of the incident, is a Hispanic male who stands 5'9" tall and weighs 180 pounds, with black hair and brown eyes. § 87(2)(b)

### **Statements to Medical Personnel**

§ 87(2)(b) was transported to § 87(2)(b) on § 87(2)(b). § 87(2)(b) stated that he was home arguing with himself due to the stressors in his life; identified as housing and financial struggles, which escalated to him raising his voice and slamming "an object" against the wall. Upon NYPD and EMT arrival, § 87(2)(b) stated that he was quietly sitting in the kitchen and was cooperative. He stated that he was unjustly tasered (Encl. 25X).

### **CCRB Testimony**

§ 87(2)(b) filed his complaint with the CCRB on September 4, 2013 (Encl. 6A-B). He provided a telephone statement on September 6, 2013, (Encl. 7A), and was interviewed at the CCRB on September 12, 2013 (Encl. 7B-7J). § 87(2)(g)

At approximately 2:00 p.m. on September 3, 2013, § 87(2)(b) was inside of his home located at § 87(2)(b) in the Bronx with his mother § 87(2)(b) and his two sisters § 87(2)(b) and § 87(2)(b). § 87(2)(b) and his mother had been involved in a loud argument which lasted approximately five minutes long. Approximately ten minutes after their argument concluded, two uniformed police officers, identified via investigation as Sgt. Kurtis Rose and PO Jose Acevedo, knocked on § 87(2)(b) front door. § 87(2)(b) did not see either his mother or his two sisters contact the police, and believed that one of his neighbors called them as a result of the aforementioned argument.

§ 87(2)(b) opened the front door and the two officers immediately stepped inside the apartment. § 87(2)(b) was sitting cross legged on the kitchen floor and leaning against the kitchen counter as the officers came in. § 87(2)(b) described Sgt. Rose as a white male in his late 20's who stood between 5'9" and 6'0" tall, with a muscular build and blond hair. He described PO Acevedo as a black male with a muscular build. Sgt. Rose entered the apartment with his taser gun drawn and approached § 87(2)(b) asking him what was wrong with him. As he sat cross-legged on the floor, § 87(2)(b) told Sgt. Rose and PO Acevedo that he and his mother had a verbal argument, but that there was no physical interaction, and that they had both calmed down. § 87(2)(b) then asked Sgt. Rose if he was under arrest, to which Sgt. Rose replied that he was not. After Sgt. Rose told § 87(2)(b) that he was not under arrest, § 87(2)(b) told Sgt. Rose that he had a lawyer, knew his rights, and that because he was not under arrest, the officers had no business being inside of his apartment.

§ 87(2)(b) then asked Sgt. Rose to put away his taser, however Sgt. Rose did not respond to him and kept his taser out in his right hand. As § 87(2)(b) was verbally listing his constitutional rights to Sgt. Rose, four additional officers entered the apartment and encircled § 87(2)(b) mother and two sisters who were standing approximately ten feet away in the adjacent room. The investigation has identified two of the officers who entered the apartment as PO Jonathan Katz and PO Jaime Martinez. § 87(2)(b) described PO Martinez as a Hispanic male who stood 5'7" tall with a chubby build, but could not provide a description for PO Katz and the two unidentified officers other than that they were males officers dressed in uniform.

§ 87(2)(b) remained sitting on the floor as he repeatedly told Sgt. Rose in a calm and low voice to leave the apartment. Without warning or provocation, Sgt. Rose discharged his taser at § 87(2)(b) with one of the darts hitting him above his left nipple and a second dart hitting the left side of his stomach. § 87(2)(b) slumped against the counter he had been leaning against, and while he was still being tasered, one of the officers ran up to him,

placed their hand on the top right side of his head, and slammed his head down onto the ground. As a result of being slammed onto the ground, § 87(2)(b) received minor cuts and lacerations to the left side of his face near his left eye. § 87(2)(b) did not see which officer slammed his head down, but stated that he felt someone place their hand on the back of his head and pushed his head down onto the floor. After he was hit with the taser, § 87(2)(b) heard Sgt. Rose state, "I've always wanted to do that," and another officer whom he did not see respond, "You popped your cherry."

Once his head was slammed onto the floor, Sgt. Rose placed § 87(2)(b) in handcuffs. All of the officers then took § 87(2)(b) out of his apartment and brought him outside. While being taken downstairs, § 87(2)(b) asked Sgt. Rose for his name and shield number, however Sgt. Rose stated, "That's none of your concern." Sgt. Rose did not provide his name and shield number to § 87(2)(b) at any point during this incident.

§ 87(2)(b) was then placed in an ambulance and transported to § 87(2)(b) in the Bronx. He was accompanied by an officer, PO Martinez, who rode in the ambulance with him. When he arrived at the hospital, § 87(2)(b) handcuffs were removed by PO Martinez and he was taken into the emergency room. A doctor removed the two barbs from his body and gave him two unspecified pills. § 87(2)(b) was then released from the hospital at approximately 10:00 p.m. later that night, before returning home. § 87(2)(b) was not charged with a crime during this incident, nor was he issued a summons.

### Statement to the Press

§ 87(2)(b)  
§ 87(2)(g)  
According to the article, § 87(2)(b) was sitting on the floor of his kitchen when a police officer deployed his taser gun at him after his § 87(2)(b)-old sister opened the door.

### Photographs

On September 20, 2013, § 87(2)(b) emailed five photographs to the CCRB. It is unclear when the photographs were taken. They were labeled Photo 1 through Photo 5 (Encl. 7I-7L).

Photo #1: Depicts a laceration above § 87(2)(b) left nipple.

Photo #2: Depicts a laceration on the lower left portion of § 87(2)(b) stomach area.

Photo #3: Depicts the same laceration as Photo # 2.

Photo #4: Depicts the same laceration as Photo #1.

Photo #5: Depicts minor lacerations to the left side of § 87(2)(b) face near his left eye.

### Witness: § 87(2)(b)

§ 87(2)(b) § 87(2)(b) old at the time of the incident, is a Hispanic female who stands 5' feet tall and weighs 180 pounds with black hair and brown eyes. § 87(2)(b)

On October 4, 2013, § 87(2)(b) was interviewed at the CCRB (Encl. 8B-D). The interview was conducted in Spanish by Investigator Bernardo Gutierrez, § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) had been in an argument regarding § 87(2)(b) finding employment. § 87(2)(b) did not use physical force against anyone

during the argument. § 87(2)(b) entered a room and her daughter § 87(2)(b) informed her that § 87(2)(b) was on the floor. § 87(2)(b) entered the kitchen and saw that § 87(2)(b) was seated on the floor with his back rested against the stove. § 87(2)(b) asked him what was wrong and told him to get off of the floor; however § 87(2)(b) asked to be left alone. § 87(2)(b) asked him if he was okay a second time and again he told her to leave him alone. She obliged and stopped interacting with him. He did not make any other statements towards her. To § 87(2)(b) knowledge, § 87(2)(b) had not consumed any alcohol or drugs, and she was unaware of any health problems that could have accounted for his behavior.

While standing inside of the kitchen, § 87(2)(b) heard knocking at the apartment's front door. One of her daughters opened the door and four uniformed officers, identified via the investigation as Sgt. Rose, PO Acevedo, PO Katz, and PO Martinez entered the apartment. § 87(2)(b) remained in the same seated position as the officers entered. § 87(2)(b) who does not speak or understand English, did not understand what the officers were saying as they only spoke in English. § 87(2)(b) did not hear any conversation with either of her daughters and the officers prior to them entering. Upon entering, the officers went straight into the kitchen and instructed § 87(2)(b) to get off the floor. § 87(2)(b) responded by telling them to leave him alone. § 87(2)(b) clarified that § 87(2)(b) was translating these statements into Spanish as they occurred.

Officers then instructed § 87(2)(b) and § 87(2)(b) to get out of the kitchen. § 87(2)(b) stood in the hallway immediately outside of the kitchen as additional officers, who remain unidentified, entered the apartment. § 87(2)(b) could not describe these officers beyond one being 6' tall and having a muscular build. § 87(2)(b) stood in the hallway outside of the kitchen while looking inside. § 87(2)(b) did not exchange any words with the officers aside from telling the officers to leave him alone.

One of the officers suddenly stood in front of § 87(2)(b) which she felt was meant to obstruct her view, when she heard a sound coming from the kitchen. After managing to look inside, she saw three wires sticking out of § 87(2)(b) body. One wire was attached to his right pectoral area, one to his right rib area and one to his left rib area.

§ 87(2)(b) was unsure if § 87(2)(b) was handcuffed while on the floor. § 87(2)(b) was placed in a "seat" that was neither a wheelchair nor a gurney and brought downstairs. Later in the evening, § 87(2)(b) accompanied § 87(2)(b) home from § 87(2)(b). § 87(2)(b) later informed that she had called 911 for an ambulance earlier in the evening.

#### **Attempts to Contact Civilians**

- Between September 19, 2013, and October 29, 2013, five telephone calls were made and five voice messages were left for § 87(2)(b) and § 87(2)(b). On September 19, 2013, and September 27, 2013, two please call letters were to sent to § 87(2)(b) and § 87(2)(b) and as of December 12, 2013, have not been returned by the United States Postal Service. As of December 12, 2013, neither § 87(2)(b) nor § 87(2)(b) have responded to either the voice messages that have been left for them, or the please call letters that were sent to them. A NYC DOC search conducted on December 12, 2013, indicated that neither § 87(2)(b) nor § 87(2)(b) was currently incarcerated. (Encl. 17A-J).

#### **NYPD Statement(s):**

##### **Subject Officer: SGT KURTIS ROSE**

Sgt. Kurtis Rose, of PSA 7, § 87(2)(b) old at the time of the incident, is a white male who stands 5'9" tall and weighs 175 pounds, with brown hair and blue eyes.

Sgt. Rose worked from approximately 6:55 a.m. until 3:52 p.m. on September 3, 2013. He was assigned as the patrol supervisor and worked with PO Acevedo. He was assigned to a marked RMP, vehicle number 9150, and was dressed in uniform.

### **Memo Book**

At 2:45 p.m. an ambulance for an emotion disturbed person at § 87(2)(b) – CED # x00-718908 discharged (cartridge # 4102EKA5 on § 87(2)(b) SOB § 87(2)(b). At 4:45 p.m. Inv. # 2000243314. At 5:20 p.m. Cartridge F & A # 13-172 (Encl. 10A-C).

### **CCRB Testimony**

On December 2, 2013, Sgt. Kurtis Rose was interviewed at the CCRB (Encl. 9I-K).

Sgt. Rose and PO Acevedo responded to the location and were the first officers to arrive on scene. While walking into the apartment, Sgt. Rose asked § 87(2)(b) who needed help, and she replied that her brother, § 87(2)(b) needed help. She also said that § 87(2)(b) was acting strange, and that she did not know why. Sgt. Rose asked her if § 87(2)(b) had any history of mental illness, and she replied that he did not. Sgt. Rose then asked her if § 87(2)(b) had used any drugs that made him act erratically, and she replied that it was a possibility.

When Sgt. Rose and PO Acevedo walked into the apartment, there were several overturned items, including an overturned bookcase, on the floor. Sgt. Rose saw § 87(2)(b) sitting on the kitchen floor. Before Sgt. Rose or PO Acevedo said anything to § 87(2)(b) § 87(2)(b) said, "Fuck you. Nobody called. Get the fuck out of my apartment." On the floor surrounding § 87(2)(b) were large pieces of broken glass which came from a large glass bowl that had been broken in half. In addition to broken glass, kitchen silverware, including kitchen knives were also on the floor.

Sgt. Rose told PO Acevedo to interview the family members, identified as § 87(2)(b) and § 87(2)(b) who were inside of the apartment to gain any additional information. § 87(2)(b) and § 87(2)(b) were standing in the corner of the hallway where § 87(2)(b) was crying uncontrollably and § 87(2)(b) appeared to be frightened. They both stated that § 87(2)(b) did not have any history of mental illness.

Sgt. Rose issued § 87(2)(b) repeated commands to leave the kitchen, however § 87(2)(b) responded by saying "Fuck you." Sgt. Rose told § 87(2)(b) that if he would not allow the officers to place handcuffs on him, he would have to taser § 87(2)(b) § 87(2)(b) replied, "Fuck you. If you try to put handcuffs on me, I will resist arrest." § 87(2)(b) who was still sitting down, then reached out for either a piece of glass or for one of the officers' legs. In response Sgt. Rose discharged his taser at § 87(2)(b) with the taser darts entering § 87(2)(b) mid-section. Sgt. Rose had previously removed his taser at some point after he saw § 87(2)(b) sitting on the floor, but did not remember specifically when.

Once § 87(2)(b) was tasered, several officers whom Sgt. Rose did not identify, went to place § 87(2)(b) in handcuffs once the charge stopped. § 87(2)(b) was lying on his side when he was tasered; however § 87(2)(b) kept his arms underneath his body so that the officers could not grab his arms. Sgt. Rose then sent another charge through the wires and into § 87(2)(b) body. After the second charge, § 87(2)(b) gave up his arms and the officers were able to place him in handcuffs. Once § 87(2)(b) was placed in

handcuffs, Sgt. Rose had the officers place § 87(2)(b) in a chair so that he could breathe easier. EMS then arrived and transported § 87(2)(b) to the hospital. Sgt. Rose remained inside of the apartment when § 87(2)(b) was removed and taken downstairs by EMS.

Sgt. Rose did not, nor did he see an officer place their hand on the top of § 87(2)(b) head and slam it onto the floor. Sgt. Rose denied ever being asked, or hearing any other officer being asked for their name and shield number at any point during this incident.

**Subject Officer: PO JONATHAN KATZ**

*PO Jonathan Katz, of PSA 7, § 87(2)(b) old at the time of the incident, is a white male who stands 5'7" tall and weighs 225 pounds, with brown hair and brown eyes.*

*PO Katz worked from approximately 7:05 a.m. until 3:40 p.m. on September 3, 2013. He was assigned to patrol sector David and Frank with PO Martinez. He was assigned to a marked police vehicle, and was dressed in uniform.*

**Memo Book**

At 2:22 p.m., PO Katz received a radio run for an emotionally disturbed person at § 87(2)(b). At 2:26 p.m., § 87(2)(b) gone on arrival. At 3:00 p.m., PO Katz escorted EMS to § 87(2)(b) (Encl. 9A-C).

**AIDED Report**

PO Katz prepared an AIDED Report, (Encl. 9D-H), related to this incident. In the “emotionally disturbed” section of the AIDED Report, PO Katz selected “yes.” In the “attempt to harm self” section, PO Katz also selected “yes,” while in the “attempt to harm other” section he left it blank. In the “details” section PO Katz wrote, “At time, place of occurrence, AIDED was acting in an erratic manner and was threatening to hurt himself. AIDED refused to comply with orders and was tased one time by Sgt. Rose, PSA 7. AIDED was removed to § 87(2)(b) by bus # 287.”

**CCRB Testimony**

On November 26, 2013, PO Jonathan Katz was interviewed at the CCRB (Encl. 9I-K).

§ 87(2)(g)

At approximately 2:00 p.m. on September 3, 2013, PO Jonathan Katz and PO Martinez received a radio run for a male suspect who was cutting himself. Upon arriving at § 87(2)(b) in the Bronx, PO Katz did not remember whether he and PO Martinez were the first officers who arrived on the scene, but recalled that additional officers arrived before they entered the apartment.

PO Katz originally stated that he knocked on the door, but then stated that he was not sure whether it was he or another officer who knocked on the door. A female civilian identified as § 87(2)(b) opened the door and allowed the officers into the apartment. PO Katz did not remember whether any officer requested to come in or if § 87(2)(b) verbally invited the officers in.

Upon entering the apartment PO Katz heard a commotion, which he could not describe beyond loud sounds coming from an area which was not visible to the officers. The officers then entered the kitchen area where he observed § 87(2)(b) sitting between a glass table and the counter. There were broken shards of glass on the floor and knives present, however § 87(2)(b) did not have either in his hands when PO Katz saw him. PO Katz could not describe where the knives were specifically located, however he remembered the knives being

within an arm's reach of § 87(2)(b) PO Katz did not observe any broken or damaged property within the kitchen beyond the shards of glass on the floor. § 87(2)(b) appeared angry and erratic, which PO Katz stated he ascertained based upon the fact that § 87(2)(b) was taking extremely deep, audible breaths and had his fists clenched. Although there was some conversation between § 87(2)(b) and the officers, PO Katz did not remember any of the details of the conversation. He did not remember § 87(2)(b) threatening to hurt himself or any of the officers. PO Katz did not remember whether § 87(2)(b) asked any of the officers why they were there, or if he told the officers to leave. PO Katz did not see § 87(2)(b) hurt himself at any point during this incident, nor did he observe any self-inflicted injuries on § 87(2)(b).

Sgt. Rose used his taser on § 87(2)(b) while § 87(2)(b) remained in the kitchen area, however PO Katz did not remember whether § 87(2)(b) was standing or sitting when he was hit with the taser darts. § 87(2)(b) was hit with the taster in the front part of his body. PO Katz did not remember how § 87(2)(b) fell after being struck by the taser, nor did he see § 87(2)(b) face make contact with any glass on the floor. PO Katz, with the assistance of another officer whom he could not recall, placed § 87(2)(b) in handcuffs. PO Katz did not slam § 87(2)(b) head against the floor, nor did he see any other officer slam § 87(2)(b) head against the floor. PO Katz did not say, "I've always wanted to do that," or "You popped your cheery" in response to § 87(2)(b) being hit with the taser, nor did he hear any other officer make such a comment. PO Katz did not hear § 87(2)(b) request any officers' name or shield number, nor did he hear Sgt. Rose ever refuse to provide § 87(2)(b) with his name and shield number. § 87(2)(b) was ultimately transported to § 87(2)(b) and was not charged with a crime.

**Subject Officer: PO JAIME MARTINEZ**

*PO Jaime Martinez, of PSA 7, § 87(2)(b) old at the time of the incident, is a Hispanic male who stands 5'11" tall and weighs 225 pounds, with no hair and brown eyes.*

*PO Martinez worked from approximately 7:05 a.m. until 3:40 p.m. on September 3, 2013. He was assigned to patrol with PO Katz. He was assigned to a marked police vehicle and was dressed in uniform.*

**Memo Book**

At 2:22 p.m. received a radio run for an emotionally disturbed person at § 87(2)(b). At 2:26 p.m., gone on arrival. At 3:00 p.m., escorted EMS bus to § 87(2)(b) (Encl. 11A-C).

**CCRB Testimony**

On December 3, 2013, PO Jaime Martinez was interviewed at the CCRB (Encl. 11D-F).

§ 87(2)(g)

PO Martinez and PO Katz arrived at the location at the same time as Sgt. Kurtis Rose and an additional officer. One of the officers then asked § 87(2)(b) if they could enter the apartment and she opened the door for them to come in.

Upon entering the apartment, § 87(2)(b) led the officers into the kitchen. When he entered the kitchen area PO Martinez observed § 87(2)(b) sitting on the floor with his back against the stove. Surrounding § 87(2)(b) on the floor was broken glass. There were also kitchen knives and other silverware out on the counter within arm's reach of § 87(2)(b). The kitchen was approximately six to eight feet wide, and in front of § 87(2)(b) there was also glass table. § 87(2)(b) was sitting with his fists balled up and



was huffing and puffing. PO Martinez did not see anything in § 87(2)(b) hands, nor did he ever see § 87(2)(b) ever attempt to grab a piece of glass. PO Martinez could not tell where the broken glass that was on the floor had come from.

§ 87(2)(b) mother and another § 87(2)(b) were standing immediately outside of the kitchen area in the hallway. PO Martinez spoke with § 87(2)(b) mother, who appeared nervous and told PO Martinez that she was worried about § 87(2)(b) because she had never seen him act that way before.

PO Martinez did not remember which officer initiated conversation with § 87(2)(b) but remembered that commands were issued for § 87(2)(b) to exit the kitchen. § 87(2)(b) refused to exit the kitchen, and told the officers, "If you touch me, I'm going to fuck you up." The officers told § 87(2)(b) to leave the kitchen an additional two times, however § 87(2)(b) continued to refused to get out of the kitchen. Sgt. Rose then took out the taser and told § 87(2)(b) that if he did not leave the kitchen, he would be tasered. § 87(2)(b) refused again and said, "If you fucking taser me, I'm going to fuck you up to." Sgt. Rose told § 87(2)(b) an additional two times that he would taser him if he did not get out of the kitchen; however § 87(2)(b) refused to comply with the officers' commands.

Sgt. Rose then tasered § 87(2)(b) shooting the darts into § 87(2)(b) stomach area. When § 87(2)(b) was tasered, he fell from his sitting position onto the floor, hitting his head against the ground. After § 87(2)(b) was tasered, PO Katz placed him in handcuffs. § 87(2)(b) did not resist PO Katz and appeared to be in shock after he was tasered. After he was placed in handcuffs § 87(2)(b) was handed over to EMS.

#### **Subject Officer: PO JOSE ACEVEDO**

*PO Jose Acevedo, of PSA 7, § 87(2)(b) old at the time of the incident, is a Hispanic male who stands 5'11" tall and weighs 230 pounds, with black hair and black eyes.*

*PO Acevedo worked from approximately 7:05 a.m. until 3:00 p.m. on September 3, 2013. He was assigned as the Sergeant Operator with Sgt. Rose. He was assigned to a marked RMP, vehicle number 9150, and was dressed in uniform.*

#### **Memo Book**

At 2:45 p.m. PO Acevedo received a radio run for an emotionally disturbed person at § 87(2)(b) suicidal and threatening to hurt others. At 3:10 p.m., § 87(2)(b) was removed to § 87(2)(b) by sector officers (Encl. 12A-B).

#### **CCRB Testimony**

On December 10, 2013, PO Jose Acevedo was interviewed at the CCRB (Encl. 12C-E).

§ 87(2)(g)

PO Acevedo did not remember whether the door to the apartment was opened or closed when they arrived, nor did he remember whether anyone opened the door to let Sgt. Rose or himself inside. Upon entering the apartment PO Acevedo observed § 87(2)(b) either sitting or lying on the floor of the kitchen with his back against possibly a washing machine. § 87(2)(b) was screaming and cursing prior to PO Acevedo or Sgt. Rose saying anything to him. § 87(2)(b) was not facing PO Acevedo as the officers entered the kitchen, and was looking somewhere else. He was bleeding from a cut on either his hand or wrist, and there was blood on the floor of the kitchen.

As Sgt. Rose started to speak with § 87(2)(b) PO Acevedo went to speak with § 87(2)(b)

§ 87(2)(b) mother and sister who were standing outside of the kitchen in the hallway. PO Acevedo asked § 87(2)(b) mother and sister, in Spanish, what happened and they responded that § 87(2)(b) had been going crazy, acting violent and breaking stuff. One of § 87(2)(b) sisters told PO Acevedo that § 87(2)(b) had been cutting his own hand with a piece of glass prior to the police arriving. § 87(2)(b) mother seemed very upset and worried, and said that § 87(2)(b) had been upset about either losing his job or not being able to find a job.

As PO Acevedo was speaking with § 87(2)(b) mother and sister, additional officers arrived. PO Katz and PO Martinez were among the officers who were present, and although PO Acevedo could not remember specifically any other officers, he remembered that additional officers from PSA 7 were present.

§ 87(2)(b) continued acting “violent,” which PO Acevedo described as yelling, cursing, and screaming that he was not going to leave. Multiple commands were issued by several of the officers for § 87(2)(b) to leave the kitchen, however § 87(2)(b) refused to comply. The officers also told § 87(2)(b) at least three times that he had to get out of the apartment and go to the hospital, however § 87(2)(b) verbally refused, and told the officers to get out of the apartment or he was going to sue them.

Sgt. Rose told § 87(2)(b) that if he did not comply with their commands to get out of the apartment he would have to taser him. § 87(2)(b) replied to the effect, “If you touch we’re fighting. Don’t put your hands on me. I’m not going easy.” After he was tasered and the officers went to put § 87(2)(b) in handcuffs, § 87(2)(b) was “fighting” with the officers by waving his arms and trying to move away from them. PO Acevedo did not know which officers specifically placed him in handcuffs. PO Acevedo did not see any additional visual injuries on § 87(2)(b) after he was placed in handcuffs.

### **Medical Records**

The medical records from September 3, 2013, (Encl. 25X), indicate that § 87(2)(b) was brought to § 87(2)(b) after being tasered by police officers inside of his apartment on September 3, 2013, after he became aggressive with people inside of his home. The darts were removed from § 87(2)(b) body and he was prescribed Benzodiazepine before being discharged later that the same day.

The medical records note that in reviewing the ACR, it confirms that § 87(2)(b) was picked up at his home address; however it notes that a family member stated that he destroyed the apartment and he was described as hostile and uncooperative. § 87(2)(b) and § 87(2)(b) are cited on the medical records, stating that § 87(2)(b) was verbally abusive and slamming doors and that they called the police to evaluate him. They also stated that § 87(2)(b) had been smoking marijuana daily. § 87(2)(b)

### **NYPD Document(s)**

#### **SPRINT**

A SPRINT Print-Out (Encl. 13A-C), indicates that at 2:19 p.m. on September 3, 2013, a female call contacted 911 and requested medical and police assistance at § 87(2)(b). The call was marked as an ambulance case, with an emotionally disturbed person inside. At 2:20 p.m. it is reported on the SPRINT that the female caller stated that AIDED was trying to cut himself. The SPRINT indicates that at 3:02 p.m. AIDED was being transported to § 87(2)(b) by EMS.

### **911 Call and Communication CD**

The 911 Call and Communications CD, (Encl. 17G-H), indicates that the initial call to 911 was made by one of § 87(2)(b) sisters, who does not identify herself but states that her brother is “going crazy” and she needs an ambulance and the police to respond to their apartment. In reference to her brother she states, “He’s cutting himself and throwing stuff around.” At 1:03 of the recording, the call cuts off and goes silent until 2:06. At 2:06 you can hear a phone ringing, and the NYPD dispatcher who was speaking to § 87(2)(b) sister contacts EMS and states that the caller hung up, but stated that her brother is trying to cut himself and is going crazy. Through the rest of the recording, the NYPD dispatcher provides the unidentified EMS caller with the home address information for § 87(2)(b)

### **Non-Lethal Restraining Device Report**

The Non-Lethal Restraining Device Report, (Encl. 14E), prepared by Sgt. Rose, indicates in the details section that, “after receiving a radio run for a suicidal EDP, Sgt. Rose and PSA 7 sectors D/F and E arrived on scene encountering listed emotionally disturbed person who was sitting on ground in kitchen with broken glass and kitchen utensils within reach. The emotionally disturbed person refused to comply with officers’ orders to exit kitchen and speak with EMS. The emotionally disturbed person stated “if you use that Taser on me, I will fuck you up,” and, “I’m not coming with you, I will resist.” For the emotionally disturbed person’s and officers safety, Taser was discharged and the emotionally disturbed person was handcuffed, resulting in no injuries to all involved.” The report also indicates that the taser was deployed by Sgt. Kurtis Rose and was used from a distance of four feet from § 87(2)(b). Two of the darts made contact with § 87(2)(b)

### **Status of Civil Proceedings**

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of December 13, 2013, (Encl. 18J).

### **Civilian(s) Criminal History**

- § 87(2)(b)

### **Civilian(s) CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) (Encl. 4A).

### **Subject Officer(s) CCRB History**

- PO Jonathan Katz has been a member of the service for seven years and there are no substantiated CCRB allegations against him (Encl. 2A).
- Sgt. Kurtis Rose has been a member of the service for five years and there are no substantiated CCRB allegations against him (Encl. 2B).
- PO Jaime Martinez has been a member of the service for five years and there are no substantiated CCRB allegations against him (Encl. 2C).
- PO Jose Acevedo has been a member of the service for ten years and there four substantiated CCRB allegations against him. In case number 200506488, it was found that PO Acevedo used an excessive amount of force, used an illegal choke hold, and unjustifiably questioned someone. He was ultimately found not guilty for the force related charges and not disciplined for the unjustified questioning. In case number 200706234, it was found that PO Acevedo

used offensive language in reference to someone's sexual orientation. He was ultimately found guilty and penalized with the loss of 15 vacation days (Encl. 2D-E).

## **Conclusion**

### **Identification of Subject Officer(s)**

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

In his CCRB statement, (Encl. 7B-D), § 87(2)(b) [REDACTED] alleged that after Sgt. Rose and PO Acevedo entered his apartment, four additional officers entered his apartment. § 87(2)(b) [REDACTED] could not provide any description for the four officers beyond them being male and dressed in uniform. The investigation has determined that along with Sgt. Rose and PO Acevedo, PO Katz and PO Martinez were present inside the apartment. Sgt. Rose, PO Acevedo, PO Martinez, and PO Katz acknowledged that there were additional officers from PSA 7 who were present for this incident; however none of the officers were able to identify any of these additional officers. § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]

In his CCRB statement, (Encl. 7B-D), § 87(2)(b) [REDACTED] alleged that while he was being tased, an officer placed their hand on the side of his head and slammed his head onto the ground. § 87(2)(b) [REDACTED] did not provide a description for the officer who he alleged slammed his head onto the floor, and stated that he did not see which officer did it. § 87(2)(g) [REDACTED]  
[REDACTED]

### **Investigative Findings and Recommendations**

**Allegation A- Abuse of Authority- Sgt. Kurtis Rose entered and searched § 87(2)(b) [REDACTED] in the Bronx.**

**Allegation B - Abuse of Authority- PO Jose Acevedo entered and searched § 87(2)(b) [REDACTED] in the Bronx.**

**Allegation C - Abuse of Authority- PO Jaime Martinez entered and searched § 87(2)(b) [REDACTED] in the Bronx.**

**Allegation D - Abuse of Authority- PO Jonathan Katz entered and searched § 87(2)(b) [REDACTED] in the Bronx.**

**Allegation E – Abuse of Authority- Officers entered and searched § 87(2)(b) [REDACTED] in the Bronx.**

§ 87(2)(b) [REDACTED] alleged that after arguing with his mother, officers from PSA 7 knocked on his door and immediately entered his apartment after his sister § 87(2)(b) [REDACTED] opened the door. § 87(2)(b) [REDACTED] did not state whether the officers asked for permission before entering the apartment, or if § 87(2)(b) [REDACTED] invited them in, however he repeatedly told the officers to leave his apartment.

PO Katz and Sgt. Rose stated that when they knocked on the door, a female civilian opened the door and invited them in. Neither PO Katz nor Sgt. Rose remembered whether the

invitation to enter the apartment was provided verbally or physically, but both stated that the female civilian did not raise any objections to them entering the apartment.

PO Acevedo did not remember whether the door to the apartment was opened or closed when they arrived, nor did he remember whether anyone opened the door to let Sgt. Rose or himself inside. PO Martinez stated that § 87(2)(b) sister opened the door and told the officers that her brother was acting very strange and that she has never seen him act the way he had been acting. One of the officers asked her where § 87(2)(b) was, and she replied that he was sitting on the floor of the kitchen. One of the officers then asked the female civilian if they could enter the apartment and she opened the door for them to come in.

The 911 Call and Communications CD, (Encl. 17G-H), indicates that the initial call to 911 was made by one of § 87(2)(b) sisters, who does not identify herself but states that her brother is “going crazy” and she needs an ambulance and the police to respond to their apartment. In reference to § 87(2)(b) she stated, “He's cutting himself and throwing stuff around.” The statements made by § 87(2)(b) family members as recorded in his medical records corroborate the circumstances described in the 911 Call and Communications CD. In those medical records, family members of § 87(2)(b) stated that he destroyed the apartment and was being hostile and uncooperative.

A warrantless intrusion into a person's apartment is constitutional if it was justified by exigent circumstances. In determining whether exigent circumstances are present, both the federal and state courts have applied a number of different factors. These factors include (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause ... to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry. People v. Hunter, 92 N.Y.S 2d 719 (2012) (Encl. 1A-C).

§ 87(2)(g)

**Allegation F- Force – Sgt. Kurtis Rose used a Taser against § 87(2)(b)**

It is undisputed that Sgt. Rose discharged his taser at § 87(2)(b) with one of the darts entering his chest above his left nipple, and the other dart piercing the left side of his stomach. It is also undisputed that immediately prior to the police officers entering the apartment; § 87(2)(b) had been acting in a violent manner, and posed a serious threat to himself and those around him.

§ 87(2)(b) alleged that while sitting on the floor of his apartment and calmly asking the officers to leave, Sgt. Rose discharged his taser without warning. When Sgt. Rose and the other officers confronted § 87(2)(b) he was sitting on the floor of his kitchen, surrounded by broken glass and in the close proximity to kitchen utensils. The investigation credits the statements made by Sgt. Rose, PO Acevedo, and PO Martinez, in which they stated that in addition to refusing multiple commands to leave the kitchen, § 87(2)(b) threatened to physically resist any attempt to forcibly remove him from the apartment.

Patrol Guide Procedure 203-11 indicates that the primary duty of all members of the service is to preserve life. Only that amount of force necessary to overcome resistance will be

used to effect an arrest or take a mentally ill or emotionally disturbed person into custody. The Patrol Guide also states that the use of non-lethal alternatives is to be used when it is deemed appropriate (Encl. 1D).

§ 87(2)(g)

**Allegation G- Force- An officer used force against**

§ 87(2)(b)

§ 87(2)(b) alleged that while he was being tased, an officer placed their hand on the side of his head, and slammed his head onto the ground. § 87(2)(b) did not provide a description for this officer, and stated that he did not see who did this to him.

Sgt. Rose, PO Katz, PO Martinez, and PO Acevedo all denied placing their hand on § 87(2)(b) head and slamming it onto the floor. They also all denied having seen any other officer slam § 87(2)(b) head onto the floor.

§ 87(2)(g)

**Allegation H- Abuse of Authority- Sgt. Kurtis Rose refused to provide his name and/or shield number to**

§ 87(2)(b)

§ 87(2)(b) alleged that while he was being taken out of his apartment he requested Sgt. Rose's name and shield number. In response Sgt. Rose stated, "That's none of your concern."

Sgt. Rose denied having ever been asked to provide his name and shield number. PO Katz, PO Acevedo, and PO Martinez all stated that they did not hear § 87(2)(b) ask Sgt. Rose or any other officer for their name and shield number.

§ 87(2)(g)

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date